IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

Filed Mar. 19, 1900.

No. 205.

GEORGE LHOTE AND THE CHURCH EXTENSION SOCIETY OF THE METHODIST EPISCOPAL CHURCH,

Plaintiffs in Error.

vs.

THE CITY OF NEW ORLEANS, ET AL.,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR.

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Assistant City Attorney,

SAM'L L. GILMORE,
City Attorney.

(17,290.)

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This case comes to this Court by a writ of error to the Supreme Court of the State of Louisiana. The facts of the case are as follows:—

STATEMENT OF THE CASE.

In the year 1857 the Common Council of the City of New Orleans passed Ordinance No. 3267, O. S., and Ordinance No.

3428, O. S., fixing the limits outside of which it was illegal for lewd women to live. Subsequent amendments were made by Ordinance No. 6302, O. S. The limits or districts, defined by these ordinances are marked upon the maps in the transcript, pages 114 and 122.

These ordinances remained in force until the year 1890, when Ordinance 4434, C. S., was passed, changing the limits, but otherwise being substantially the same as the ordinances enacted thirty-three years before.

This ordinance is printed at the end of this brief. It was not copied in the transcript, because of agreement between counsel (see page 16, transcript).

In January, 1897, the Council passed Ordinance 13,032, C. S., (printed on pages 6 and 7 of the transcript), by which a large portion of the district covered by Ordinance 4434 was excluded from the limits.

In July, 1897, Ordinance No. 13,485, C. S. (printed on page 5 of the transcript), was passed, which extended the limits, authorized by Ordinance 13,032, C. S., so as to include St. Louis street within the territory outside of which lewd women were excluded.

It will be noted that none of these ordinances compelled or authorized lewd women to live *within* certain limits of the city; they simply prohibited them from living *outside of* certain limits.

In order that the Court may more clearly understand the question, we ask your Honors' attention to the maps printed in the transcript on pages 114 and 122. From this you see that, in 1857, a very large portion of the City of New Orleans was within limits outside of which lewd women could not live.

As the City grew, it became necessary to change the boundaries of the district, and in 1890, Ordinance 4434 was adopted. This ordinance excluded such women from all that part of the City outside of a district bounded by Poydras, St. Louis, Claiborne and the river; excluding, however, Canal, Rampart, St. Louis and Conti streets.

Under this state of affairs these women frequented a very large part of the city, extending, as the map shows, from the river to Claiborne street and from Poydras to St. Louis street. By the year 1897, because of the growth and progress of the city, it happened that this included a very valuable and populous section; it included a neighborhood filled with stores, churches, public schools, etc. The City Council, considering these facts, in 1897, passed Ordinance 13,032, C. S., which curtailed these limits by excluding all that part of the city in the old limits, which was between Basin street and the river.

In other words, they simply took the limits defined by the old ordinances and declared that hereafter lewd women should not live within that part of the old limits bounded by Basin street, the river, Poydras and St. Louis streets.

A short time afterward, finding that St. Louis street was practically abandoned to this class of people, and had been for some years past (which we may consider the evidence in the transcript proves conclusively), they passed Ordinance 13,485, C. S., by which the limits were changed so as to include St. Louis street. Ordinance 13,485 was promulgated July 7, 1897.

On September 22, 1897, George Lhote, a respectable and well known citizen, representing himself to be a property owner on Treme (or N. Liberty, as printed on the maps) street, near St. Louis street, but outside of the limits included by

the ordinance, presented a petition to the Court, stating that he lived near St. Louis street, and that his neighborhood was a virtuous one, and that the city had adopted an Ordinance 13,485, amendatory of Ordinance 13,032, whose natural result would be to allow lewd women to live within a half square of his house; and further, that such neighbors would annoy him and would depreciate the value of his property, and would force him and his virtuous neghbors to leave the locality, where they had lived for so many years.

Further, Mr. Lhote states that the Common Council of the city, having previously designated the limits within which such women should live, had thereby exhausted whatever power the Council had in the matter and were without legal right to change, alter or modify the same; he further says that there was no good and sufficient reason for the enactment of said ordinance, or for the changing of the limits previously existing and established; and he asks that this Ordinance 13,032, as amended by 13,485, be declared null and void—the prayer of his petition being as follows: (See transcript, page —)

"Wherefore petitioner prays, the annexed bond and affidavit considered, that a writ of injunction do issue herein, directed to the city of New Orleans, through its Mayor and D. S. Gaster, Superintendent of Police, enjoining, restraining and prohibiting said city, its officers, agents, representatives and employees, and the said Superintendent of Police, and each of them, from in any manner enforcing or attempting to enforce said Ordinance No. 13,032, C. S., as amended by Sec. 1 of Ordinance No. 13,485, C. S. That said city of New Orleans, through its Mayor and D. S. Gaster, Superintendent of Police, be severally cited to appear and answer this petition, and that after due proceed-

ings said injunction be maintained and perpetuated, and said ordinance be declared unconstitutional, illegal, unreasonable, and as such null and void and without any legal force, validity or effect whatsoever."

On his petition an injunction issued *ex parte*, enjoining the Mayor and Chief of Police "from in any manner enforcing or attempting to enforce Ordinance No. 13,032, C. S., as amended by Sec. 1 of Ordinance No. 13,485, C. S."

The Supreme Court of Louisiana gave judgment in favor of the city of New Orleans, against both plaintiffs, L'Hote and the Methodist Church Extension Society, on the grounds stated in the opinion which is found at page 125 of the transcript:

"The regulation of houses of prostitution would seem to be so clearly connected with public order and decency, the policy announced by the ordinance has been so long exerted in all large cities of our country, and the power has had such frequent recognition in the charters of this city that it would seem the power itself cannot be successfully controverted."

Argument.

The assignments of error filed by the plaintiffs are found on pages 133 and 134 of the transcript, and are eight in number.

I.

The first assignment of error is, "that the Court erred in holding that Ordinances Nos. 13,032 and 13,485, C. S., do not deprive plaintiff and intervenor of the equal protection of the law."

Where the equal protection of the law comes in here, we are at a loss to see. These ordinances simply say that lewd and abandoned women shall not live outside of certain parts of the

city of New Orleans. One of the plaintiffs in error lives outside of these "limits", and the other plaintiff in error is a Methodist Church Society, domiciled in Philadelphia, which has a Chapel located within those "limits". Where on earth these plaintiffs can find any reason for concluding that an ordinance prohibiting lewd women from living beyond certain "limits" deprives these plaintiffs of the full protection of the law we fail to see. This point was not argued in the Court below, and counsel for defendants in error are unable to understand the application of this so called error in this case.

II.

The second error assigned is "that the Court erred in refusing to hold that the said ordinances and the power conferred upon the Mayor of the city of New Orleans thereby were not due process of law". The ordinances named, which are found on pages 5 and 6 of the transcript, speak for themselves. The power that they confer upon the Mayor is simply a power of supervision. This power of supervision consists in this; that whenever the Mayor finds any house to be dangerous to morals of the city of New Orleans, he can order the occupant to move therefrom within five days, and if such occupant fails to remove within the prescribed time, then an affidavit is made before a magistrate, and the question decided whether or not said occupant is violating the ordinance, and whether or not the house is dangerous to public morals; and if the Recorder finds these facts to be true, he inflicts a punishment upon the occupant. This finding of the Recorder is subject to an appeal to the Criminal District Court for the Parish of Orleans.

Louisiana Constitution of 1898, Article 139:—

"The Criminal District Court shall have appellate jurisdic-
" tion in all cases tried * * * before the Recorders' Courts
" of New Orleans."

This method is surely "due process of law", giving the violator a trial in two different Courts, where witnesses can be heard, and a decision had whether or not the Mayor wisely or legally exercised his power.

III, IV AND VI.

The third, fourth and sixth errors assigned are, respectively, that the ordinances deprive plaintiffs of property without due process of law, that they are not a valid exercise of the police power, and that they violate rights guaranteed or secured by the Federal Constitution.

The plaintiffs in error evidently mean by the third assignment of error, that if the city of New Orleans, in fixing the "limits" outside of which lewd and abandoned women shall not live, should happen to fix the lines in some place where property owned by the plaintiffs is situated, that the proximity of that class of people would lessen the value of the property of plaintiffs, and that this deterioration would amount to a taking of property without due process of law.

In this connection we call the attention of the Court to the inconsistency of plaintiffs' demands.

The Methodist Church is situated on Bienville street in square No. 159 (see map, page 122). This particular square whereon this church is built has formed from time immemorial a portion of the district where lewd and abandoned women have been allowed to dwell. Before the church was built, these women were allowed to live in this section. See map, page 114 of the transcript.

It comes with ill-grace now from the Church Society to complain that an ordinance adopted in 1897, which is really a reiteration of an ordinance adopted in 1857, is null and void and to their prejudice, when they had moved in that neighborhood at a period when that particular spot was dedicated to the vicious element. In fact, their Chapel was evidently originally erected for missionary work amongst the class in whose midst it was established, and their existence is its only *raison d'etre.*

As to Mr. L'Hote, the other plaintiff, who joined this Church in the assignments of error, he lives outside of the "limits", at No. 522 Treme street (Treme being called N. Liberty street on the map in evidence), which is in square 153 of the map on page 122.

For 40 years Mr. L'Hote's residence had been just as close to the limits allotted to lewd women, but in 1894 the Council adopted Ordinance 4434, C. S., which changed the limits outside of which lewd women might dwell. By agreement of counsel the map found on page 115 of the transcript, correctly delineates the boundaries of the so called limits, and there your Honors will see that the lines of 4434, C. S., ran straight along St. Louis street from the river to N. Claiborne street, coming within one-half of a square of Mr. L'Hote's residence. It also comes with bad-grace from Mr. L'Hote, he having lived for so many years in a neighborhood whose characteristics are fully set forth in the transcript, and which section is no different under the contested ordinance from what it was under the ordinances which prevailed for fifty years, to come into Court and question the ordinance of 1897. For even if he succeeds in wiping out the ordinance of 1897 and under the same principle the ordinance of 1890, he will find that his residence will be similarly situated, with reference to this class of people.

But apart from this question of inconsistency, and apart from that fact that for many years the surroundings of Mr. L'Hote's residence and of the Church Chapel have been of the lowest describable in point of reputation, his house being one of the few respectable houses in the neighborhood, we must not say that if a city government should name a district within which lewd women can or cannot live, that such an act deprives people of their property without due process of law.

These poor creatures must live somewhere, and it surely lies within the discretion of the City Council to set apart certain districts for their occupancy, and having legally and honestly exercised that discretion the Court should hesitate to revise the Council's decision.

It is of course very probable that some one must suffer in the injury to his feelings, etc., but that is *damnum absque injuria*, to which some must submit in order that the whole population may benefit.

The police power of the city granted to her by the State in her various charters, gives her the right to regulate its lewd women.

Act 20 of 1882, Louisiana Legislature, Sec. 8, Clause 11:

"The Council shall have the power to regulate the police of theatres, * * * houses of prostitution and assignation, and to exclude such houses from certain limits, and shall have power to close the same, * * * and to authorize the Mayor and police to close such places."

The existing city charter is the Act of Louisiana Legislature Act 45 of 1896. Section 15, Clause 11 of that Act provides:—

"The Council shall have power, * * * to regulate the police of theatres, * * * houses of prostitution and assignation, and to close such houses in certain limits, and shall have

power to exclude the same, * * * and to authorize the Mayor and police to close such places."

The regulation of such houses and such women is essentially a police power of the city, and when the City Council, in the exercise of its discretion, enacts an ordinance, declaring that such people shall not live outside of certain limits, they have acted wisely in their discretion, and the courts will not interfere with them, as that would be substituting the discretion of the courts for the discretion of the Council, and that is certainly something that this Court will not sanction.

The City Council represents the entire body of citizens; they have at heart the best interests of the city; when they exercise this discretion legally, and set aside a portion of the city, outside of which lewd and abandoned women may not live, we think that such discretion should not be interfered with by the Court, unless it should be shown that it was done with unreasonableness or prejudice.

Now, what does the evidence in this case disclose? We find that in the district formerly set apart for such people, by Ordinance 4434, C. S., there are to-day nine churches, two schools and ten public buildings. That in the territory covered by Ordinance 13,485, there are only one church, one school and not one public building. The discretion of the City Council surely was correctly exercised, and on this comparative statement concerning the two districts, the new one is certainly the one where less harm can result.

Right here let us call to the attention of the Court that this district, which is called the "new district", is not now, for the first time, set apart for such purposes. It has always been a part of the district set aside for such purposes since 1890, when Ordinance 4434, C. S., was adopted.

Consequently, it does not follow that because a portion of the territory set apart in 1890 for lewd women is hereafter to be devoted exclusively to respectable people, that such action on the part of the City Council is to be considered as devoting for the first time the rest of that district to other uses.

Again, when we examine the testimony in the case we find witness after witness saying that the objection to such people leaving the front of the old district and moving into the back of the old district springs not from any yearning to improve the moral tone of the city, but rather from a selfish desire to keep rented to these characters the houses in the front of the old district, which the new ordinance forces them to abandon.

V.

The fifth assignment of error is, that the Court erred in not holding that the ordinances attacked make arbitrary and unjust discrimination against the Church Society, which, plaintiffs say, belongs to the colored race. This is another remarkable claim. How on earth an ordinance, which on its face simply prohibits prostitutes and lewd women from living outside of certain limits, can be considered a discrimination against a religious corporation that found a field of missionary labor in a portion of the city set aside for abandoned and lewd women, we cannot perceive.

There is no mention made in the ordinance of colored people or of churches for colored people. As we have said before, in our answer to the third, fourth and sixth errors assigned, it will be seen from the maps that the district which is set apart in the recent ordinances, has been embraced for years and years back by the district wherein lewd and abandoned women were con-

fined. That church is the only church in the district, there being only one public school (and that on the outskirts of the district)—and not a single public building within its limits.

In fact, if that class of people must live somewhere, no section of the city can be found, where they can be placed with less danger to the morals of the city, than the district described on page six of the transcript.

There can be no discrimination against the colored church by an ordinance prohibiting prostitutes from living in certain sections of the city of New Orleans. Mr. L'Hote, the other plaintiff, is a white man. How can a white man and a Philadelphia corporation combine in a plea that this same ordinance discriminates against the colored race? There is no question of race, color or previous condition in this case. It is simply and purely a reasonable exercise of the police power of the city of New Orleans.

VII.

The seventh assignment of error is, that this ordinance violates the fourteenth amendment to the Constitution of the United Sates. We presume by this is meant, a violation of section one of that 14th amendment, being that part of it which reads:—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty, or property, without due process of law."

The preservation of the public morals, is one of the duties of a municipal corporation, which call for the exercise of the police power, and where, as in this case, the police power of the State is

used for the purpose of suppressing vice, and of excluding bawdy houses from certain limits, and confining houses of prostitution and ill-fame to certain parts of a city, such exercise will never be construed as a violation of the Fourteenth Amendment.

"Every citizen holds his property subject to the proper exercise of the police power, exercised either by the Legislature or some subordinate political corporation.

"It is settled that police laws and regulations are not unconstitutional, even though they may disturb the enjoyment of individual rights. If the individual suffers any injury, it is deemed *damnus absque injuria*, or, in the theory of the law, the injury to the owner is deemed compensated by the public benefit the regulation is designed to subserve."

1st Dillon on Municipal Corporations, p. 93.

1st Dillon, Section 310.

Black's Constitutional Law, page 310.

Dwarris on Statutes, p. 455.

That the adoption of ordinances regulating bawdy-houses is within the undoubted police power of a municipality is well settled by the weight of authority can, in no respect, be considered as open to discussion.

The Federal Constitution, broad and comprehensive as it is, was not designed in any respect to interfere with the power of a State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier vs. Connolly, 113 U. S., 31.

Ordinances to regulate and confine the prosecution of business, even lawful and not immoral in character, within certain definite territorial limits have been held by this Court as being

purely police regulations, within the competency of a municipality possessed of ordinary powers.

Barbier vs. Connolly, 113 U. S., 27.

Soon Hing vs. Crowley, 113 U. S., 797.

In a matter so closely connected with the public morals as the regulation of houses of prostitution, it would hardly seem necessary to adduce reasons or cite authority to maintain that their confinement to certain prescribed limits, in the judgment of the municipal authorities best calculated to mitigate their evil effects, is obviously included within the ordinary powers of a municipal corporation.

State vs. Karstendeik (La.), 39 Lawyers' Reports, Annotated, 521.

In Louisiana the power to suppress such establishments has been held free from constitutional objection.

City vs. Roos, 35 La. An. Rep., 1011.

There can be no merit in the seventh assignment of error, for the ordinances in question are surely a legitimate exercise of the police power for the protection of the public health and morals, and as such do not violate the Federal Constitution.

VIII.

The eighth assignment of error, that the Court erred in rendering judgment in favor of defendants, is fully disposed of by the consideration of the arguments relative to the other errors assigned.

We respectfully submit that the opinion and decree of the Supreme Court of the State of Louisiana are correct and should be affirmed.

Respectfully submitted,

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For Defendants in Error.

APPENDIX.

Ordinance 4434, Council Series, Adopted April 15th, 1890.

Be it ordained by the Common Council of the city of New Orleans, Sec. 1:

Section 1. That public prostitutes or notoriously lewd and abandoned women are forbidden to stand upon the sidewalks in front of or near the premises they may occupy, door or gate of such premises, or to occupy the steps thereof, or to accost, call or stop any person passing by, or to walk up and down sidewalks, or to stroll about the city streets indecently attired, or in other respects so to behave in public as to occasion scandal or disturb and offend the peace and good morals of the people.

Section 2. That it shall not be lawful for any lewd woman to frequent any cabaret or coffee house or to drink therein.

Section 3. That all houses, buildings or rooms occupied or inhabited by lewd women, and all houses of prostitution and of assignation, shall at all times be subject to the visitation of the police, and it shall be the duty of the police, while strictly enforcing the provisions of this ordinance, to extend to such lewd and abandoned women the same protection given to other inhabitants of this city.

Section 4. That it shall not be lawful for any public prostitute or woman notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any house, room or closet situated without the following limits, and that said women are excluded from any other portion of the city outside of the limits now specified, viz.: South side of Poydras street from the Mississippi river to Claiborne street, west side of Claiborne street from Poydras to St. Louis street, north side of St. Louis street from

Claiborne street to the river, and along the river bank from St. Louis to Poydras street; provided, that nothing herein shall be so construed as to give the right to any lewd women to occupy a house, etc., as herein provided, in any particular portion of the city.

SECTION 5. That it shall not be lawful for any public prostitute notoriously abandoned to lewdness to occupy, inhabit, live or sleep in any one story house, or a room or closet of the first or lower story of any house in the city of New Orleans outside of the limits specified in section 4 of this ordinance.

SECTION 6. That it shall not be lawful to establish or carry on a house of prostitution or assignation within the limits specified in section 4 of this ordinance.

SECTION 7. That any person, whether agent or owner, who shall knowingly rent or hire, or continue to rent or hire, after being notified by the Mayor that he or she is acting in contravention of this ordinance, any house, building or room to any woman or girl notoriously abandoned to lewdness, shall be brought before the Recorder of the District in which the offence is committed and punished as provided in section 10 of this ordinance.

SECTION 8. That wherever a house of prostitution or assignation, within or without the limits established by this ordinance, may become dangerous to the public morals, either from the manner in which it is conducted or the character of the neighborhood in which it is situated, the Mayor may, on such facts coming to his knowledge, order the occupant of such house, building or room, to remove therefrom within a delay of five days, by service of notice on such occupants in person, or by posting the notice on the door of the house, building or room, to

remove therefrom, within a delay of five days, and upon such occupants failing to do so, each shall be punished as provided in section 10 of this ordinance.

SECTION 9. That in the event that the occupants of such house, building, or room, referred to in section 8, do not remove therefrom after the infliction of the penalty, the Mayor is authorized to close the same and to place a policeman at the door of such premises to ward away all such parties who shall undertake to enter.

SECTION 10. That any person or persons who shall violate the provisions of this ordinance or who shall disturb the tranquility of the neighborhood, or commit a breach of the peace, shall be subject to a fine not exceeding $25, to be imposed by the Recorder of the District in which the offence shall be committed and in default of payment of the fine, to imprisonment in the Parish Prison for a term not exceeding thirty days.

SECTION 11. That each day any person shall continue to violate the provisions of this ordinance shall constitute a separate offence.

SECTION 12. That Ordinances 3267, O. S.; 3428, O. S.; 7141, A. S.; 7325, A. S.; and 2051, C. S., on the same subject as this ordinance be repealed.

SECTION 13. That nothing in this ordinance shall be taken to affect or repeal Ordinance 4101, C. S., relative to prostitutes on Canal street, or Ordinance 3430, C. S., relative to prostitutes in the Fifth District, nor to allow prostitutes to occupy, inhabit, live or sleep in any house, room or closet, situated on the following streets, viz.: Rampart, St. Louis and Conti streets.